

COMPANY DIRECTORS DISQUALIFICATION ACT 1986

DISQUALIFICATION UNDERTAKING

**IN RE ERITH CONTRACTORS LIMITED (Company number 01102060) ("ERITH") and
ERITH HOLDINGS LIMITED (Company number 02586308) ("EH") (together "EEH")**

**CASE 50697: CMA INVESTIGATION INTO THE SUPPLY OF DEMOLITION AND
RELATED SERVICES IN THE UNITED KINGDOM**

I, David John Darsey, of [REDACTED], hereby undertake to the Competition and Markets Authority ("**the CMA**"), on the basis set out in the schedule attached to this disqualification undertaking, that in accordance with section 9B of the Company Directors Disqualification Act 1986 ("**CDDA 1986**");

I WILL NOT for a period of **5 years 10 months**:

- a) be a director of a company, act as a receiver of a company's property or in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company unless (in each case) I have the leave of the court; or
- b) act as an insolvency practitioner.

Further, I understand that if I act in contravention of the above disqualification undertaking:

- a) I may be prosecuted for a criminal offence (CDDA 1986 section 13); and
- b) I may be personally responsible for all the relevant debts of a company (CDDA 1986 section 15).

The scope and effect of the disqualification undertaking that I hereby give has been explained to me in the CMA's letter of 1 February 2023.

I am aware that (i) my resignation of my directorships on 1 June 2022; (ii) my confirmation that I have not, during the period between 1 June 2022 and the date this undertaking takes effect, either directly or indirectly been concerned or taken part in the promotion, formation or management of a company or acted as an insolvency practitioner; and (iii) my prompt offer of this undertaking to the CMA, has led the CMA to accept a shorter disqualification period than it would have otherwise accepted.

I further confirm and undertake to the CMA that I will use my best endeavours to cooperate with, and assist, the CMA in its director disqualification investigation in relation to Case 50697 and any related proceedings.

The CMA has explained that I may seek legal or professional advice on the effect of this undertaking, and I was given the opportunity to do so before signing the undertaking.

Signed

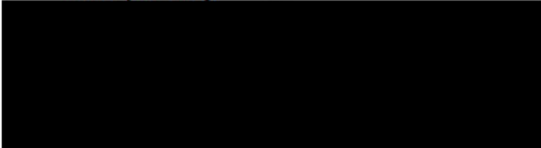


~~DAVID JOHN DARSEY~~

1-2-23,

Date

Accepted by



2 February 2023

Date

For the Competition & Markets Authority

Note: the period of disqualification commences on **2 February 2023**.

SCHEDULE TO THE DISQUALIFICATION UNDERTAKING GIVEN BY
DAVID DARSEY

Solely for the purpose of the CDDA 1986, and for any other purposes under the provisions of the CDDA 1986 and other legislation consequential to the giving of a disqualification undertaking, I admit the following matters:

BACKGROUND

1. Erith Contractors Limited ('**Erith**') was incorporated on 15 March 1973. Erith Holdings Limited ('**EH**') was incorporated on 27 February 1991. Throughout the Relevant Periods (defined below) Erith was 99.99% owned by EH.
2. I joined Erith as a Director on 2 August 1993 and EH as a Director on 1 July 2007. I held these positions until 1 June 2022.
3. Erith is a family business, and I sat on the main board of Erith alongside my brothers. I also held the position of managing director of demolition.
4. As managing director of demolition at Erith, I held full responsibility for the demolition and contracting divisions of the business and I was responsible for relationship building with clients. As part of this role, I was directly involved in the decision-making process and had oversight in relation to all tender exercises.
5. Junior colleagues acted on my instruction, including where cover bidding arrangements were in place, and I gave the final sign-off on each tender we submitted.

BREACH OF COMPETITION LAW

6. As provisionally found by the CMA in its Statement of Objections issued on 23 June 2022 (the **Statement**), EEH infringed the prohibition imposed by section 2(1) in the Competition Act 1998 (the '**Chapter I Prohibition**') by participating in five cover bidding agreements, three of which featured compensation payment arrangements. I was personally involved in the following infringements described in the Statement (together, the '**Infringements**'), which occurred during the time periods set out below (the '**Relevant Periods**'):
 - 6.1. **Infringement 1:** On at least 17 January 2013, Erith and Scudder (as defined in the Statement) infringed the Chapter I Prohibition by participating in an agreement or concerted practice in the form of a cover bidding and compensation payment arrangement which had as its object the prevention, restriction or distortion of competition in relation to the supply of Demolition Services and Asbestos Removal Services (as defined in the Statement) for the Bishop Centre, Taplow. The value of the tender was £1,096,859 and the contract was awarded to Erith.
 - 6.2. **Infringement 3:** Between at least 3 June 2013 and 8 July 2013, Erith and McGee (as defined in the Statement) infringed the Chapter I Prohibition by participating

in an agreement or concerted practice in the form of a cover bidding and compensation payment arrangement which had as its object the prevention, restriction or distortion of competition in relation to the supply of Demolition Services for the Shell Building, Southbank. The final value of the contract was £21,050,000 and the contract was awarded to McGee.

- 6.3. **Infringement 5:** Between at least 28 May 2014 and 11 June 2014, Erith and Scudder infringed the Chapter I Prohibition by participating in an agreement or concerted practice in the form of a cover bidding and compensation payment arrangement which had as its object the prevention, restriction or distortion of competition in relation to the supply of Demolition Services for Station Hill, Reading. The final value of the contract was £4,529,263 and the contract was awarded to Scudder.
- 6.4. **Infringement 8:** Between at least 15 July 2014 and 27 August 2014, Erith and Scudder infringed the Chapter I Prohibition by participating in an agreement or concerted practice in the form of a cover bidding arrangement which had as its object the prevention, restriction or distortion of competition in relation to the supply of Demolition Services for Lombard House, Redhill. The final value of the contract was £1,452,290.40 and the contract was awarded to Scudder.
- 6.5. **Infringement 14:** Between at least 18 November 2016 and 1 December 2016, Erith and Cantillon (as defined in the Statement) infringed the Chapter I Prohibition by participating in an agreement or concerted practice in the form of a cover bidding arrangement which had as its object, the prevention, restriction or distortion of competition in relation to the supply of Demolition Services for Ilona Rose House. The final contract sum was £20,550,000, and it was awarded to Cantillon.
7. I understand that each of the Infringements constitute separate and freestanding breaches of competition law (and do not form part of a single continuous infringement).
8. I accept that:
- (a) each of the Infringements had the object of restricting competition;
 - (b) Erith breached competition law by engaging in the Infringements;
 - (c) at all material times, Erith was wholly owned by EH; and
 - (d) accordingly, for the reasons set out in the Statement, the first condition for a competition disqualification order is satisfied (namely, that companies of which I was a director committed a breach of competition law).

MATTERS OF UNFITNESS

9. I accept that I was a director of both Erith and EH throughout the Relevant Periods of the Infringements as described in paragraphs 6.1 to 6.5 above.

10. I admit that my conduct as a director of Erith and EH was such as to make me unfit to be concerned in the management of a company, since my conduct directly contributed to EEH's breaches of competition law. As the managing director with final oversight over each demolition tender issued, I accept that Erith's participation in each of the Infringements resulted from my involvement.
11. In the case of each Infringement, I took a central role, either personally negotiating the cover bid arrangements with the other party / parties involved or authorising Erith employees to undertake such negotiations. In those cases where I delegated the negotiations, Erith employees acted under my supervision, and at my direction.
12. In respect of infringements 1, 3, 5 and 8, I was personally involved in agreeing the cover bidding arrangements with Erith's competitors.
13. In relation to infringements 1, 3, and 5 I was also involved in the agreement of compensation payments, as set out below:
 - 13.1. **Infringement 1:** This infringement involved Scudder providing a cover bid for Erith. As I explained to the CMA during my interview on 5 and 6 November 2020, [REDACTED] (Scudder) had offered to provide a cover price for Erith. To facilitate this, and so that Scudder knew 'where to be', I instructed an Erith employee to send Erith's completed tender documentation to [REDACTED]. Later that year, I sent a text message to [REDACTED] asking if I could invoice him for '*reading less taplow 75 less 35 is 40k?*'. I informed the CMA that £35,000 was the compensation payment that Erith owed to Scudder for the cover price Scudder submitted in the tender process relating to the Bishop Centre, Taplow.
 - 13.2. **Infringement 3:** This infringement involved Erith providing a cover bid for McGee. As I explained to the CMA during my interview, I was contacted by [REDACTED] in relation to this tender. He told me that he was desperate for the job, and that he would make payment to Erith in consideration for Erith taking a "*back seat*". I agreed to this proposal on Erith's behalf, including agreement of a compensation payment of £500,000 (excluding VAT), and directed my staff to not compete for the contract. Subsequently, Erith issued a series of purported invoices to McGee, ostensibly for supply of "*reusable steel*". Although, during my interview with the CMA, I was unable to independently recall the agreed and invoiced amount, I admit that these payments were received from McGee solely in compensation for the cover price that Erith submitted in the tender process relating to the Shell Building, Southbank. I further admit that these invoices were issued by Erith in respect of fictional services and goods that were not in fact ever supplied by Erith to McGee, for the purpose of ensuring that these compensation payments would not "*stand out*" in Erith's books and records.
 - 13.3. **Infringement 5:** I was personally involved in agreeing on Erith's behalf the cover bidding and compensation payment arrangement with Scudder, the ultimate winner of the tender, in relation to Station Hill, Reading. I was also directly involved

in negotiating an agreement with another undertaking invited to tender, on Scudder's behalf:

13.3.1. I was directly contacted by [REDACTED] (Scudder) who sent me the following text message, *'Dave, Offer for reading 50k each Placings to be agreed See if you can get agreement and we can talk later re budgets etc'*.

13.3.2. The next morning, I wrote back to [REDACTED] informing him I had spoken to 'all' and setting out the tender price proposed to be submitted by McGee. [REDACTED] and I then settled the proposed timetable for McGee. I told the CMA during my interview, that [REDACTED] had trouble contacting [REDACTED] (McGee) and so I contacted him on [REDACTED] behalf.

13.4. Later that year, I followed up with [REDACTED] asking if I could invoice him for *'reading less taplow 75 less 35 is 40k'*. [REDACTED] replied asking me to hold off from issuing the invoice for the time being and seeking to clarify that the agreed compensation payment in relation to Station Hill, Reading, was £65,000 (rather than £75,000). I agreed.

14. In relation to infringement 8, I was personally involved in agreeing the cover bidding arrangements with Erith's competitor, Scudder, but this agreement did not involve the payment of compensation. My involvement in this infringement is summarised below:

14.1. **Infringement 8:** I was initially contacted by [REDACTED] (Scudder), who proposed placing Erith on the tender list for this contract. We arranged to meet in person, and I agreed that Erith would be placed on the list for the tender. Once the tender exercise had commenced, I asked [REDACTED] whether *'we need to go thru motions (sic)'* on the tender. In my interview with the CMA I explained that this was my attempt to ascertain the level of involvement required for this cover price. Erith subsequently submitted a cover price on Scudder's behalf in relation to the Lombard House, Redhill project, and Scudder successfully won the contract.

15. In addition to personally negotiating with my competitors, I was also directly responsible for authorising Erith's employees to liaise with Erith's competitor, Cantillon, to agree a cover bidding arrangement. In relation to Infringement 14, I arranged for an Erith employee to engage in the following conduct:

15.1. **Infringement 14:** I was contacted by [REDACTED] (Cantillon) who requested that Erith provide a cover for Cantillon in respect of Ilona Rose House. Following this discussion, I informed [REDACTED] an Erith employee, that Erith was not going to compete on this tender but was *'going to get a number from Cantillon'*. Acting at all times in accordance with my directions, [REDACTED] subsequently engaged in detailed correspondence with his counterpart at Cantillon in order to settle the cover price and to seek assistance in responding to tender queries. Erith subsequently submitted a cover bid, and Cantillon successfully won the contract.

16. As a result of my conduct described above, I caused Erith to engage in conduct which created conditions of competition which did not correspond to the normal conditions of the market and/or took no steps to prevent such conduct.
17. It was clear to me, given my position as an experienced director, that such interactions between competitors to agree cover bids carried unacceptable risks of infringing competition law.
18. I accept that cover bidding has been found to be a form of price fixing, and is therefore among the most serious types of competition law breach. My participation in the Infringements contributed to Erith's breaches of competition law, and was central to EEH being subject to a proposed penalty under section 36(1) of the Competition Act 1998.